

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAMES W. GRIFFITH,

Plaintiff,

v.

JAMES L. POTTS, M.D.,

Defendant.

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NO. 3:09-00565
JUDGE HAYNES


ORDER

Upon review of the file, the Defendant James L. Potts, M.D., filed a motion for summary judgement (Docket Entry No. 69) to which Plaintiff has not responded. Although Local Rule 7.01(b) authorizes the Court to construe the opposing party's failure to respond to mean there is not any opposition to the motion, Fed. R. Civ. P. 56(e)(2) still requires the Court to grant summary judgment only "if appropriate." Thus, Rule 56(e) requires consideration of the merits.

Upon review of the file and pursuant to Fed. R. Civ. P. 41(a)(2), the Plaintiff's claims against the Defendant James L. Potts, M.D., are **DISMISSED with prejudice** for the Plaintiff's failure to prosecute his claims against the Defendant. The motion for summary judgement filed by Defendant James L. Potts, M.D., (Docket Entry No. 69) is **DENIED** as moot.

It is so **ORDERED**.

ENTERED this the 9th day of April, 2010.


WILLIAM J. HAYNES, JR.
United States District Judge